

1 James S. Greenan, SBN 53648
2 Nelson S. Hsieh, SBN 177128
3 Ciprian Dogaru, SBN 220556
4 GREENAN, PEFFER, SALLANDER & LALLY
5 LLP
6 6111 Bollinger Canyon Road, Suite 500
7 San Ramon, CA 94583
8 Telephone: (925)866-1000
9 Facsimile: (925)830-8787

10 Attorneys for Plaintiff Hudson Specialty
11 Insurance Company

12 Wallace C. Doolittle, SBN 158116
13 LAW OFFICES OF WALLACE C. DOOLITTLE
14 1260 B Street, Suite 220
15 Hayward, CA 94541
16 Telephone: (510) 888-0600
17 Facsimile: (510) 888-0606

18 Attorneys for Defendants Data Exchange
19 Systems, LLC and Eric G. Swallow

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 (SAN FRANCISCO DIVISION)

23 HUDSON SPECIALTY INSURANCE COMPANY, a Delaware Corporation,) Case No. C05-04195 SC
24 Plaintiff,) STIPULATION FOR PROTECTIVE ORDER AND PROTECTIVE ORDER
vs.)
DATA EXCHANGE SYSTEMS, LLC, a California Limited Liability Company;)
and ERIC G. SWALLOW, an individual,)
Defendants.)
AND RELATED COUNTERCLAIM)

Counsel for the parties in the above captioned action stipulate, subject to the approval of the Court, to the following protective order:

1. In connection with the discovery proceedings in the above captioned action, the parties may designate any document, thing, material, testimony or other information derived

1 therefrom, as confidential under the terms of this Stipulated Protective Order (hereinafter "Order").
2 This Order shall govern the handling of all documents, things, testimony or other information,
3 including all copies, excerpts and summaries thereof that are subject to discovery. Discovery
4 includes, without limitation, testimony adduced at depositions upon oral examination pursuant to
5 Fed. R. Civ. P., Rule 30, written responses to interrogatories pursuant to Fed. R. Civ. P., Rule 33,
6 documents produced pursuant to Fed. R. Civ. P., Rule 34, answers to requests for admission pursuant
7 to Fed. R. Civ. P., Rule 36, and testimony, documents and things provided pursuant to Fed. R. Civ.
8 P., Rule 45.

9 2. The provisions of this Order shall apply to: (1) the parties in this action; and (2) any
10 third party producing or disclosing material(s) in this action who agrees to be, or is ordered by the
11 Court to be, bound by the terms of this Order.

12 3. By designating a document, thing, material, testimony or other information derived
13 therefrom as confidential, under the terms of this Order, the party making the designation is
14 certifying to the Court that there is a good faith basis both in law and in fact for the designation
15 within the meaning of Federal Rule of Civil Procedure 26(g). Confidential documents shall be so
16 designated by stamping copies of the document produced to a party with the legend
17 "CONFIDENTIAL." Stamping the legend "CONFIDENTIAL" on the cover of any multipage
18 document shall designate all pages of the document as confidential, unless otherwise indicated by
19 the producing party. In the case of interrogatory answers or responses to requests for admissions,
20 the designation shall be made by placing the legend "CONFIDENTIAL" on each page of any answer
21 that contains confidential information.

22 4. Testimony taken at a deposition, conference, hearing or trial may be designated as
23 confidential by making a statement to that effect on the record at the deposition or other proceeding.
24 Arrangements shall be made with the court reporter taking and transcribing such proceeding to
25 separately bind such portions of the transcript containing information designated as confidential, and
26 to label such portions appropriately. Counsel attending a deposition who inadvertently fails to
27 designate any portion of the transcript as confidential materials on the record at the deposition shall
28 have thirty (30) days following mailing of the transcript by the court reporter, in which to correct the

1 failure. Such correction and notice thereof shall be made in writing to the reporter, with copies to
2 all other counsel, designating the portion(s) of the transcript that constitute confidential materials,
3 and directing the reporter to mark them "CONFIDENTIAL." Until expiration of the aforesaid thirty
4 (30) day period, all deposition transcripts shall be considered and treated as protected confidential
5 materials.

6 5. Material designated as confidential under this Order, the information contained
7 therein, and any summaries, copies, abstracts, or other documents derived in whole or in part from
8 material designated as confidential (hereafter "Confidential Material") shall be used only for the
9 purpose of the prosecution, defense, or settlement of the above captioned action, and for no other
10 purpose.

11 6. Confidential Material produced pursuant to this Order may be disclosed or made
12 available only to the Court, to counsel for a party (including the paralegal, clerical, and secretarial
13 staff employed by such counsel), and to the "qualified persons" designated below:

- 14 (a) a party, or an officer, director, or employee of a party deemed necessary by counsel
15 to aid in the prosecution, defense, or settlement of this action;
- 16 (b) experts or consultants (together with their clerical staff) retained by such counsel to
17 assist in the prosecution, defense, or settlement of this action;
- 18 (c) the Court and those employed by the Court (including Court reporters, stenographic
19 reporters and Court personnel), in which case such information shall be filed under
20 seal and kept under seal until further order of the Court;
- 21 (d) a witness at any deposition or other proceeding in this action; and
- 22 (e) any other person as to whom the parties in writing agree.

23 Prior to receiving any Confidential Material, each "qualified person" shall be provided with
24 a copy of this Order and shall execute a nondisclosure agreement in the form of Attachment A, a
25 copy of which shall be provided forthwith to counsel for each other party and for the parties.

26 7. Depositions shall be taken only in the presence of qualified persons.

27 8. The parties may further designate certain discovery material or testimony of a highly
28 confidential and/or proprietary nature as "CONFIDENTIAL--ATTORNEY'S EYES ONLY"

1 (hereinafter "Attorney's Eyes Only Material"), in the manner described in paragraphs 3 and 4 above.
2 Attorney's Eyes Only Material, and the information contained therein, shall be disclosed only to the
3 Court, to counsel for the parties (including the paralegal, clerical, and secretarial staff employed by
4 such counsel), and to the "qualified persons" listed in subparagraphs 6(b) through (e) above, but shall
5 not be disclosed to a party, or to an officer, director or employee of a party, unless otherwise agreed
6 or ordered. If disclosure of Attorney's Eyes Only Material is made pursuant to this paragraph, all
7 other provisions in this order with respect to confidentiality shall also apply.

8 9. When a party providing documents inadvertently fails to mark Confidential
9 documents "CONFIDENTIAL" or "CONFIDENTIAL--ATTORNEY'S EYES ONLY" at the time
10 of the production, the party shall have a reasonable amount of time within discovery to correct its
11 failure. Such correction and notice thereof shall be made in writing, accompanied by substitute
12 copies of each item, appropriately marked.

13 10. Nothing herein shall impose any restrictions on the use or disclosure by a party of
14 material obtained by such party independent of discovery in this action, whether or not such material
15 is also obtained through discovery in this action, or from disclosing its own Confidential Material
16 as it deems appropriate.

17 11. If Confidential Material, including any portion of a deposition transcript designated
18 as "CONFIDENTIAL" or "CONFIDENTIAL--ATTORNEY'S EYES ONLY" is included in any
19 papers to be filed in Court, such papers shall be labeled "CONFIDENTIAL--SUBJECT TO COURT
20 ORDER" and filed under seal until further order of this Court.

21 12. In the event that any Confidential Material is used in any court proceeding in this
22 action, it shall not lose its confidential status through such use, and the party using such shall take
23 all reasonable steps to maintain its confidentiality during such use.

24 13. This Order shall be without prejudice to the right of the parties (i) to bring before the
25 Court at any time the question of whether any particular document or information is confidential or
26 whether its use should be restricted or (ii) to present a motion to the Court under FRCP 26(c) for a
27 separate protective order as to any particular document or information, including restrictions
28 differing from those as specified herein. This Order shall not be deemed to prejudice the parties in

1 any way in any future application for modification of this Order.

2 14. Nothing in this Order shall require disclosure of materials that counsel for a party or
3 a third party contends is not relevant to the subject matter of the above captioned action, or materials
4 protected from disclosure by the attorney-client privilege or the attorney work-product immunity.
5 This shall not preclude any party from moving the Court for an Order directing the disclosure of such
6 material.

7 15. This Order is entered solely for the purpose of facilitating the exchange of documents
8 and information between the parties to this action without involving the Court unnecessarily in the
9 process. Nothing in this Order nor the production of any information or document under the terms
10 of this Order nor any proceedings pursuant to this Order shall be deemed to have the effect of an
11 admission or waiver by either party or of altering the confidentiality or nonconfidentiality of any
12 such document or information or altering any existing obligation of any party or the absence thereof.

13 16. This Order shall survive the final termination of this action, to the extent that the
14 information contained in Confidential Material is not or does not become known to the public, and
15 the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed
16 hereunder. Within sixty (60) days after final termination of this case, counsel for the parties shall
17 assemble and return to each other all documents, material and deposition transcripts designated as
18 Confidential and all copies of same, or shall certify the destruction thereof.

19
20 IT IS SO STIPULATED.

21
22 Dated: May 1, 2006

23 GREENAN, PEFFER, SALLANDER &
24 LALLY LLP

25 By: _____
26 James S. Greenan
27 Attorneys for Plaintiff Hudson Specialty
28 Insurance Company

Dated: May 1 2006

LAW OFFICE OF WALLACE DOOLITTLE

By:

Wallace C. Doolittle
Attorney for Data Exchange Systems, LLC and
Eric Swallow

ORDER

For good cause appearing and as requested by the parties, the foregoing stipulation for a protective order is the protective order entered by the Court in this matter.

Dated: May 5 2006

